

1 | agreed to it, yes.

2 | Q When did you negotiate back and forth?

3 | A Specific dates, sir, I can't tell you.

4 | Q Did you, did you, did you negotiate back and forth
5 | at that particular meeting at the restaurant you had with her?

6 | A We may have discussed it, but specifics, I don't
7 | think so. But, again, I'm not sure. This was a long time
8 | ago.

9 | Q Well, did she ever provide you with or discuss any
10 | details of the -- of her business plan before you signed this
11 | agreement?

12 | A Yes.

13 | Q When was that?

14 | A I believe at the meeting at the restaurant, where
15 | she said what she -- based on her experience, she had worked
16 | at the station for a year, as to what she thought it would
17 | cost to run it and so forth.

18 | Q Did she give you a detailed business plan?

19 | A I don't know what you mean by a detailed business --

20 | Q Did she give you a budget that had -- Aside from
21 | telling you --

22 | A A physical --

23 | Q No. Other than telling you an overall figure, did
24 | she tell you what that -- how that -- what added up -- what
25 | the components of that figure were?

1 A She did not run through each and every item on it,
2 no, sir.

3 Q So she didn't go -- Did she go through any items?

4 A Just the idea that she was going to lease it from
5 the previous owner and estimated that it would be this, about
6 this amount of money. And it seemed a reasonable figure to me
7 based upon my experience and -- But no, she didn't go through
8 anything line by line.

9 Q Well, you said, you said subject to detail. Did she
10 later supply that detail?

11 A No, I said the detail was in regards to the
12 arrangement of finances between myself providing the money,
13 not the operating plan.

14 Q Okay.

15 JUDGE MILLER: Mr. Beauvais, excuse me. Hang on for
16 a second. I'm going to show you a copy of Wilburn Exhibit 3
17 and I'm going to turn to page -- First of all, I'll point out
18 that this is the shareholders agreement of December 23rd,
19 1991, and that is your signature?

20 WITNESS: Yes, sir.

21 JUDGE MILLER: And at the bottom of page 3 it says,
22 "He gave me," which I've gone ahead and assumed is you,
23 "agrees to loan the company additional amounts up to
24 \$100,000," and then it goes on with some detail. How, how was
25 the figure \$100,000 arrived at?

1 WITNESS: If I remember correctly, Your Honor, it
2 was on the basis that it would cost about \$30,000 a month to
3 run the station for the first three months. And she indicated
4 that there was padding in that to allow for unknown things.
5 And I said well, in my business spirit, it's always better to
6 do more padding. So I just said well, I'll loan up to 100,000
7 rather than 90.

8 JUDGE MILLER: And was this in a normal
9 conversation?

10 WITNESS: Yes, sir.

11 JUDGE MILLER: Face to face?

12 WITNESS: Yes, sir. As I, as I recall it.

13 JUDGE MILLER: Uh-huh. And then there's a clause
14 following that \$100,000, and you can look at it. It says that
15 if you -- she wants to buy it back and the five times, then
16 six times, and then seven times. You're familiar with that?

17 WITNESS: Yes, sir.

18 JUDGE MILLER: And that clause is in there at whose
19 insistence?

20 WITNESS: I don't think either one of us's
21 insistence. It was literally picked up from the Delaware
22 winning application and it was almost identical to it. So it
23 was not something that that particular point that we
24 negotiated back and forth.

25 JUDGE MILLER: No, but the \$100,000 wasn't from the

1 --

2 WITNESS: No, that was --

3 JUDGE MILLER: -- one that carried over --

4 WITNESS: No, that was from just our discussion.

5 JUDGE MILLER: From your --

6 WITNESS: Yes, sir.

7 JUDGE MILLER: -- face to face? Now, there's also

8 -- Prior to the grant of construction permit -- The figures
9 we've been talking about are after?

10 WITNESS: Yes, sir.

11 JUDGE MILLER: And prior there were figures of TJB
12 -- ASF and TJB agreed to provide further additional paid-in
13 capital up to \$40,000. TBJ, in addition, further agrees to
14 provide additional paid-in capital up to \$60,000. How were
15 those figures arrived at?

16 WITNESS: The -- Specifically, I can't remember
17 other than the fact that she indicated that it would cost X
18 number of dollars to apply for it, to have engineering done
19 and so forth and so on. And based upon my previous
20 experience, coupled with her, we put it together.
21 Specifically, it could have been five less or ten more or --

22 JUDGE MILLER: Well, right, but, you know, I can
23 understand how you came up with 100,000. But you came up with
24 40 and then, then you say in addition.

25 WITNESS: Yeah, that we would have --

1 JUDGE MILLER: And then come up with 60,000 more.

2 WITNESS: Yeah, if need be.

3 JUDGE MILLER: If need be.

4 WITNESS: Because I didn't want to at this
5 particular point commit to that amount of money unless it was
6 necessary.

7 JUDGE MILLER: All right. Proceed, Mr. Kravetz.

8 BY MR. KRAVETZ:

9 Q Mr. Beauvais, do you remember having your deposition
10 taken in this proceeding?

11 A Yes, sir.

12 Q On Tuesday, July 13th, 1993? And I would like to
13 show you the transcript of that proceeding, identified as
14 "Deposition of Thomas Beauvais."

15 JUDGE MILLER: Well, just hand it to him. Is that
16 the deposition that Mr. Kravetz has been referring to?

17 WITNESS: It seems to be, sir.

18 JUDGE MILLER: And that deposition was taken when?

19 WITNESS: Indicates here Tuesday, July 13th, 1993.

20 JUDGE MILLER: And where was it?

21 WITNESS: In Washington here.

22 JUDGE MILLER: Uh-huh. And have you had a chance to
23 read that?

24 WITNESS: Yes, sir.

25 JUDGE MILLER: And have you signed it?

1 WITNESS: Yes, I did. That's what I was just
2 looking for as you spoke.

3 JUDGE MILLER: Oh. And so you've had a chance to
4 make any corrections that you felt were necessary, right?

5 WITNESS: Yes, sir.

6 JUDGE MILLER: And did you make any?

7 WITNESS: Yes, sir.

8 JUDGE MILLER: You did? So you have -- As far as
9 I'm concerned, I can look at that --

10 WITNESS: As I remember the deposition, yes, sir.

11 JUDGE MILLER: And, and that's after you've made
12 your corrections?

13 WITNESS: Yes, sir.

14 BY MR. KRAVETZ:

15 Q Now, I would like to direct your attention to page
16 13 and 14 of that deposition. Just read it to yourself.

17 A Yes, sir.

18 Q And were those the questions you were asked and
19 those are the answers that you were given?

20 A As I recall.

21 Q And having looked at that deposition testimony, I'd
22 like to ask you again to what extent were the specific numbers
23 that you each were to -- that you and Ms. Frizzell to invest
24 in the application, how were those arrived at?

25 A They were very similar to the winning application in

1 Delaware and most of it was picked up from that. But there
2 were some negotiation via telephone, if I remember correctly.
3 But it's almost a carbon copy of the winning application in
4 Delaware.

5 Q And the money amounts within that are --

6 A If I remember correctly, they're very similar, yes,
7 sir.

8 Q And you're saying you had subsequent negotiations
9 with Ms. Frizzell --

10 A I think, I think there were telephone conversations,
11 yes, because I got it in the mail from here, the final typing,
12 as I remember.

13 Q Which was, like you say, virtually identical to what
14 was --

15 A Yes.

16 Q -- what you had previously agreed to?

17 A Verbally at the --

18 Q Well, it was also an agreement that was identical to
19 one you'd previously --

20 A Similar.

21 Q -- in another case?

22 A Similar.

23 Q What were the differences?

24 A I can't tell you what the difference is. I'd have
25 to have both documents and go through them page by page to

1 find the differences.

2 Q Do you remember any significant differences?

3 A I can say they're probably 95-plus percent
4 identical.

5 Q Well, is there, is there anything you can think of
6 of significance that isn't identical, other than the name of
7 the person you're a partner with?

8 A This, this one she has a greater equity position and
9 there may have been -- And I think the dollar amounts were
10 different, but not that much different.

11 JUDGE MILLER: Now, you, you refer to this -- So you
12 actually -- You -- If I can go back to this winning
13 application in Delaware, you made funds available to Joann
14 Adams of Adams Broadcasting?

15 WITNESS: Yes, sir.

16 JUDGE MILLER: And you keep referring to this as a
17 winning application. It never was, never was in operation?

18 WITNESS: No, sir. The Adams Broadcasting won the
19 license, and if I remember correctly it was appealed and it
20 went to the Review Board. And I think the Review Board upheld
21 it and it went to the full Commission. In that period of
22 time, Mrs. Adams became ill and she had to go -- her heart was
23 operating at about 10 percent capacity and the doctor said
24 that she could not work anymore.

25 JUDGE MILLER: Right.

1 WITNESS: So there's no way she could fulfill the 40
2 hours a week minimum.

3 JUDGE MILLER: Right.

4 WITNESS: So she sold the radio station at that
5 point to the competing applicant.

6 JUDGE MILLER: Well, she sold, she sold whatever
7 there was --

8 WITNESS: That she had, yes, sir.

9 JUDGE MILLER: Whatever she -- Well, whatever you
10 had, too.

11 WITNESS: Yes. Well, I was --

12 JUDGE MILLER: Did you participate in the settlement
13 negotiations?

14 WITNESS: No, sir, 'cause I was a nonvoting
15 shareholder. I just had to do what she said. And then she
16 went into Ohio State University Hospital and today has the
17 heart of an 11-year-old girl in her body. With a heart
18 transplant, there was no way she could --

19 JUDGE MILLER: Yeah, I understand. I understand.

20 WITNESS: I just had to go along with --

21 JUDGE MILLER: And did you get your 80 percent
22 nonvoting -- your 80 percent equity out of the settlement?

23 WITNESS: I got 80 percent of what she settled for,
24 yes, sir.

25 JUDGE MILLER: And you're fortunate if she settled

1 well. Is that, is that, is that where we stand?

2 WITNESS: Pretty much so, although it was -- if I
3 remember correctly, it was not a, it was not a huge profit, if
4 any, involved in it.

5 JUDGE MILLER: Okay. Proceed, Mr. Kravetz.

6 BY MR. KRAVETZ:

7 Q Do you ever remember discussing the potential
8 profitability of the station with Ms. Frizzell?

9 A Specifically, no, but I'm sure I did.

10 Q But you have no recollection that you did?

11 A Not that I can say we did it on a certain date, no,
12 sir.

13 JUDGE MILLER: Well, you seem to me like a pretty
14 prudent businessman. You're not going to enter into, into an
15 agreement unless --

16 WITNESS: Have a potential of making --

17 JUDGE MILLER: A potential of making some money.

18 WITNESS: Sure.

19 BY MR. KRAVETZ:

20 Q But did you ever discuss with her what the
21 profitability of the station was at the time under her, when
22 she was general manager?

23 A If I remember correctly, she said that it was
24 basically at a break-even or, or, or a small profit.

25 JUDGE MILLER: Did she ever tell you, Mr. Beauvais,

1 if you get into this project you're not going to get rich?

2 WITNESS: No, sir, I can't remember her saying that
3 to me.

4 JUDGE MILLER: Did she -- Did you -- Did she ever
5 say you're not going to get rich but you're going to make a
6 living?

7 WITNESS: No, but she -- if I remember correctly,
8 she made comments like, you know, I think I can run it better
9 and make more money than the previous owner did.

10 JUDGE MILLER: Did you ever talk to the previous
11 fellow, Carl Fry?

12 WITNESS: Yes, sir.

13 JUDGE MILLER: Did you ever talk to Carl Fry? What,
14 what -- Tell me in your words the kind of -- what you talked
15 about.

16 WITNESS: Well, it was a -- He left me with the
17 impression that it was a rich man's toy, where I might have a
18 Lionel train set in the basement to play with, he had a radio
19 station. So I really didn't get into --

20 JUDGE MILLER: How about Mr. Nourse, did you ever
21 talk to Mr. Nourse?

22 WITNESS: Isn't that -- That's who I meant, sir.

23 JUDGE MILLER: I, I, I asked you about Carl Fry.

24 WITNESS: No. I'm sorry. No. I apologize. No,
25 I've never met a Mr. Carl Fry.

1 JUDGE MILLER: Okay.

2 WITNESS: Mr. Nourse was the one I was speaking of.

3 JUDGE MILLER: Oh, okay. Proceed.

4 BY MR. KRAVETZ:

5 Q Did you ever examine the coverage of the station
6 before you executed the shareholders agreement?

7 A No, sir, not that I can remember.

8 Q Did you ever see any kind of -- Other than this
9 general conversation, did you ever see any kind of business
10 plan before you executed the shareholders agreement?

11 A Other than the verbal, what she said she thought it
12 would cost to run the station, where she said there was some
13 padding in it, other than that, no, sir.

14 Q Did you ever check any references or do any
15 inquiries as far as Ms. Frizzell's prior management of the
16 station, WBBY? Did you ever get any references? Did you ever
17 talk to anybody about the job she had done previously?

18 A Just from Mrs. Joann Adams.

19 Q When was that?

20 A At that approximate same time.

21 Q Ms. Adams didn't work at the station then, right?

22 A No, she had left because of her health situation
23 sometime previously.

24 Q In fact, she had left before Ms. Frizzell had
25 actually become general manager?

1 A I don't know that. I don't know the dates.

2 Q So you don't know what position Ms. Frizzell had
3 when, when Joann mentioned something about her to you?

4 A I couldn't swear to what her title was at that time,
5 no, sir.

6 JUDGE MILLER: How far is Grand Rapids from
7 Southfield?

8 WITNESS: About 165 miles.

9 JUDGE MILLER: Where do you live?

10 WITNESS: In Howell, Michigan.

11 JUDGE MILLER: What's the relationship of Howell and
12 Southfield?

13 WITNESS: I don't understand what you mean by
14 relationship.

15 JUDGE MILLER: How far, how far?

16 WITNESS: It's about 47 miles.

17 JUDGE MILLER: And how far is Howell from Grand
18 Rapids?

19 WITNESS: About 110 miles.

20 JUDGE MILLER: Okay. Now, you own a 50 percent
21 ownership in, in the advertising agency in Southfield. Are
22 you active in that?

23 WITNESS: Yes, sir.

24 JUDGE MILLER: And you're also the general manager
25 over at Grand Rapids?

1 WITNESS: Yes, sir.

2 JUDGE MILLER: Is that right? How often do you
3 commute to Grand Rapids?

4 WITNESS: Two or three days a week.

5 JUDGE MILLER: And what is -- Is the remaining part
6 of your week spent with -- in Southfield?

7 WITNESS: Yes, sir.

8 JUDGE MILLER: And then we've got -- Well, I don't
9 know, are you a workaholic? Two or three days, two or three
10 days you spend in Southfield?

11 WITNESS: Yes, sir.

12 JUDGE MILLER: Right?

13 WITNESS: Um-hum.

14 JUDGE MILLER: Proceed, Mr. Kravetz.

15 MR. KRAVETZ: I have no further questions, Your
16 Honor.

17 JUDGE MILLER: Mr. Alpert?

18 MR. ALPERT: I think Mr. Kravetz covered everything
19 I was going to ask. I have no questions.

20 JUDGE MILLER: Mr. Yelverton?

21 MR. YELVERTON: Yes, Your Honor, I have a few
22 questions.

23 CROSS EXAMINATION

24 BY MR. YELVERTON:

25 Q Mr. Beauvais, my name is Stephen Yelverton. I'm

1 counsel for Ohio Radio Associates, Incorporated. Could you
2 tell us the circumstances of how you first came into contact
3 with Ms. Frizzell?

4 A Via telephone.

5 Q And who called who?

6 A She called me.

7 Q Were you expecting the telephone call?

8 A No, sir. I didn't even know who the lady was.

9 Q And what was said during that conversation?

10 A Speaking in very general terms, I mean, I don't
11 remember the specifics, she said Joann suggested I call you, I
12 want to -- I've worked here, I'm going to be out of a job, I
13 want to try to buy this or get this station, you know, and
14 will you finance me? And that generally was the gist of the
15 conversation.

16 Q And at what point in time did you decide you were
17 going to finance this application?

18 A We set up a meeting. I drove to Columbus. We had
19 breakfast, we met together, and I was impressed with the lady.
20 And based upon what she said she wanted to do, I looked at it
21 as a businessman in terms of if she was able to do good things
22 and make a profit that I would get a good return on my money.
23 And I spoke to my wife about it and we made the decision to go
24 ahead with it.

25 Q Did you discuss with Ms. Frizzell the format of the

1 station at this meeting?

2 A No, sir.

3 Q Did you discuss with Ms. Frizzell her chances of
4 winning the construction permit?

5 A I don't know whether that was discussed or not.

6 Q Did you discuss with Ms. Frizzell what her salary
7 would be as general manager?

8 A No, sir.

9 Q Did you discuss with Ms. Frizzell her past broadcast
10 experience?

11 A Nothing other than the fact that she told me she'd
12 been in the radio business for some time and the last number
13 of months as the general manager of this station before it
14 went off. But specifically, no.

15 Q Did you discuss with Ms. Frizzell your broadcast
16 background?

17 A Yes, sir.

18 Q In how much detail? What did you tell her?

19 A I can't remember, to be honest with you. I think
20 what she knew about me at that point she got from Mrs. Adams
21 who was a personal friend of hers.

22 Q Did you discuss with Ms. Frizzell in December of
23 1991 your business experience and business background?

24 A Probably did in general terms.

25 Q In December 1991 did you discuss with Ms. Frizzell

1 your relationship with Joann Adams?

2 A We very -- may well have done that, although she was
3 I'm sure totally familiar with it from my business dealings
4 with Mrs. Adams previously.

5 JUDGE MILLER: WBTZ Pinconning --

6 WITNESS: Yes, sir.

7 JUDGE MILLER: -- who's their communications
8 attorney?

9 WITNESS: Robert Healy.

10 JUDGE MILLER: WFGH Grand Rapids, Michigan, who's,
11 who's their communications --

12 WITNESS: Robert Healy.

13 JUDGE MILLER: Has -- The new FM station as
14 Trussville, Alabama, that Stanton Broadcasting Corporation is
15 the permittee of, who's their --

16 WITNESS: I believe that's also Robert Healy, sir.

17 JUDGE MILLER: Did you ever suggest that Robert
18 Healy ought to be the communications attorney for this,
19 Westerville?

20 WITNESS: No, sir, I didn't.

21 JUDGE MILLER: Do you know how the attorney was
22 chosen, Mr. Koerner?

23 WITNESS: If I remember correctly, Ms. Frizzell said
24 that she had talked to Joann and called -- if I remember,
25 called Mr. Healy and Mr. Healy said he couldn't do it because

1 his company had another one, and I believe they recommended
2 this law firm.

3 JUDGE MILLER: Was Mr. Healy connected with the
4 Delaware?

5 WITNESS: Yes, sir, he was the attorney for
6 Delaware.

7 JUDGE MILLER: All right. Proceed, Mr. --

8 MR. YELVERTON: Thank you, Your Honor.

9 BY MR. YELVERTON:

10 Q In December 1991, did Ms. Frizzell give you any
11 written documentation of her financial wherewithal?

12 A No, sir.

13 Q It's a fact that at that time she agreed to make
14 some financial contributions to the application?

15 A At that approximate time, yes.

16 Q I'd like to go back to, to the Delaware, Ohio,
17 application. Who, who initiated the idea of filing the
18 application? Was it you or Joann Adams?

19 A Mrs. Adams.

20 Q And, and how did Ms. Adams come to you with respect
21 to being a part of that application?

22 A We had known each other for -- since the early
23 sixties.

24 JUDGE MILLER: Is WBTZ Pinconning showing a profit?

25 WITNESS: No, sir.

1 JUDGE MILLER: No aspersions on your general
2 managership, but is WFGR showing any profit?

3 WITNESS: Yes, sir, and that's something we're
4 exceptionally proud of because we're one of only two classical
5 music stations in the whole state and one of very few in the
6 country.

7 JUDGE MILLER: And you're showing -- You've turned a
8 corner.

9 WITNESS: In one year, so the response from the
10 community has just been phenomenal.

11 JUDGE MILLER: All right. But if I understand it
12 correctly, at the time you joined in this particular venture
13 for Westerville, you had not been associated with a profitable
14 operation as of that time?

15 WITNESS: Yes, sir. Prior to that, our company
16 owned another radio station which we bought out of bankruptcy
17 court. It was the old WRCI and we owned that for a number of
18 years and sold it. When we bought it, it was a nothing and
19 when we sold it, it was the number two ranked station in the
20 metropolitan area.

21 JUDGE MILLER: Who's we?

22 WITNESS: My partner and I in the advertising
23 agency.

24 JUDGE MILLER: I see.

25 WITNESS: We sold that about three years ago.

1 JUDGE MILLER: In 1990?

2 WITNESS: Approximately. I'd have to go back and
3 look at the figures.

4 JUDGE MILLER: Proceed, Mr. Yelverton.

5 BY MR. YELVERTON:

6 Q You've indicated you've known Ms. Adams for a number
7 of years. Is this a social relationship or a business
8 relationship?

9 A Business.

10 Q Other than the, the application?

11 A Business.

12 Q And what, what type of business relationship was it?

13 A I was with a radio sales rep firm in Detroit and she
14 was a time buyer at an advertising agency in Detroit.

15 MR. YELVERTON: I have no further questions, Your
16 Honor.

17 JUDGE MILLER: Mr. -- I'd like to take a look at
18 that application, the integration proposal.

19 MR. KOERNER: I don't have a copy of the application
20 with me, Your Honor.

21 JUDGE MILLER: Just to be sure that I've covered
22 what I need to get covered.

23 MR. ALPERT: Your Honor, -- application or the one
24 that was filed with Your Honor after --

25 JUDGE MILLER: No, I'm talking about the one that

1 was read into the record today.

2 MR. ALPERT: Oh. I can supply it to you.

3 MR. KRAVETZ: Could you give me diversification?

4 JUDGE MILLER: All right, diversification. I just
5 wanted to make sure I've asked all the questions I -- to
6 satisfy me.

7 MR. ALPERT: I've placed before Your Honor a copy of
8 the original application filed by ASF.

9 JUDGE MILLER: Right. All right. Any redirect,
10 Mr. Koerner?

11 MR. KOERNER: Actually, I did have some, Your Honor,
12 but Mr. Yelverton covered it for me.

13 JUDGE MILLER: All right.

14 MR. YELVERTON: We want to get a full record, Your
15 Honor.

16 MR. KRAVETZ: Your Honor, may I ask one additional
17 question based on one of Your Honor's questions?

18 JUDGE MILLER: Go ahead.

19 RECROSS EXAMINATION

20 BY MR. KRAVETZ:

21 Q Where is WRCI located?

22 A In Midland, Michigan.

23 Q And did you -- were you personally involved in the
24 management of that station?

25 A Yes, sir.

1 Q In what position? What capacity?

2 A From laying on my back wiring the studio when we
3 built it to emptying wastebaskets to being the general
4 manager. It was our first venture.

5 MR. KRAVETZ: Thank you, Your Honor.

6 JUDGE MILLER: All right. Having been no redirect,
7 there will be no recross and Mr. Thomas J. Beauvais, I thank
8 you for testifying.

9 WITNESS: Thank you, Your Honor.

10 JUDGE MILLER: You're excused. And we'll -- Should
11 we break now for lunch, gentlemen?

12 MR. KOERNER: I think this would be a good time,
13 Your Honor.

14 MR. KRAVETZ: Yeah.

15 JUDGE MILLER: We'll -- We stand adjourned until 10
16 minutes of 1 by that clock, 13 minutes of 1 by my clock.

17 UNIDENTIFIED SPEAKER: Your Honor, could we just
18 make it 1:00?

19 JUDGE MILLER: No. You can make it 10 of 1.

20 MR. KOERNER: Thank you, Your Honor.

21 (Whereupon, a luncheon recess was taken from 11:47
22 a.m. until 12:54 p.m.)

23

24

25

A F T E R N O O N S E S S I O N

JUDGE MILLER: What are you doing back here, Mr. Belendiuk? I let, I let you go for the day.

MR. BELENDIUK: I have a preliminary matter, if I may, Your Honor.

JUDGE MILLER: Well, all right. Wait a minute, just a minute. Afternoon session, first day of phase 1, Westerville. Mr. Belendiuk, I've noted your presence and you evidently have a preliminary matter. Would you please honor us with it?

MR. BELENDIUK: Yes. Your Honor, this morning after testimony there was some question as to whether my client lived in, inside the one millivolt contour of the station. Whereas, the addresses we were claiming were in fact inside the one millivolt contour or not. Immediately after we left, we called John Mulaney who did the joint engineering and asked him -- we located the addresses on the map, on a larger scale map than the one we have available for the joint engineering.

We did locate the addresses. We did ask Mr. Mulaney to verify one way or the other. Mr. Mulaney did verify them. Unfortunately, the verification goes against my client. He lives just outside the contour. One case --

JUDGE MILLER: On both addresses?

MR. BELENDIUK: On both addresses. Accordingly, there's no need to contest Mr. Alpert's showing. We're not

1 planning to. It's correct and we will voluntarily withdraw
2 that, that portion of the exhibit and make any amendment
3 necessary.

4 JUDGE MILLER: Well, you don't need to withdraw it.
5 I think what I'll do is I'll just accept, I'll just accept
6 Mr. Alpert's exhibit and that's the way it'll be, the way the
7 record'll read.

8 MR. BELENDIUK: Do you need us to amend our
9 application or --

10 JUDGE MILLER: Huh?

11 MR. BELENDIUK: Do you need an amendment to the
12 application?

13 JUDGE MILLER: Hey, that's what you -- that's
14 something for -- that's what they pay you for, Mr. Belendiuk,
15 to make those kind of decisions. I'll make the kind up here,
16 up here in the hearing room. You make those kinds that go
17 over to the processing line, okay?

18 MR. BELENDIUK: Okay.

19 JUDGE MILLER: No, I think it would be wise if you
20 amend your application to, to properly reflect it. But the
21 record will stay as is -- as it has been developed with the
22 addition of Mr. Alpert's exhibits.

23 MR. ALPERT: Well, Your Honor, why don't we just
24 take care of that right now? I can identify the exhibits,
25 move them into evidence while Mr. Belendiuk is here, just to

1 make sure there's no --

2 MR. BELENDIUK: Your Honor, I assume that both
3 exhibits show that the --

4 JUDGE MILLER: Well, why don't you, why don't you,
5 why don't you take a look at them? I wouldn't -- I don't mean
6 this in a, in a, in a -- But Mr. Alpert has had engineering
7 problems throughout his career and I --

8 MR. KRAVETZ: Your Honor, if Mr. Belendiuk is
9 willing to strike those portions of the exhibit, of Mr.
10 Ringer's exhibit stating that he's claiming local residence
11 and, and --

12 JUDGE MILLER: Well, then you're faced with a second
13 thing. You're faced with his testimony here this morning, and
14 I think the best way to do it is just for me to accept, along
15 with Mr. Belendiuk's statement this afternoon and Mr. Alpert's
16 exhibits, and you will be able to make the findings that you
17 need to make. And, and with the least bit of haggling.
18 Proceed.

19 MR. ALPERT: Thank you, Your Honor. First of all,
20 I'd like to give to Your Honor a copy of a, of a document
21 entitled "Testimony of Shellee F. Davis." Now, it's marked
22 right now as Exhibit Number 3. Because something else is
23 taking up that position, that would be Davis Exhibit Number 4.
24 I would ask that that be so identified.

25 JUDGE MILLER: You want this identified as four?